

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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January 16, 2009

LEGEND

X =

A =

B =

C =

Trust1 =

Trust2 =

Date =

Year =

State =

Dear \_\_\_\_\_ :

This letter responds to a letter dated July 18, 2008, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 301.9100-3 of

the Procedure and Administration Regulations that X be granted an extension of time to file an election under § 754 of the Internal Revenue Code for taxable year Year.

### FACTS

X is a State limited liability company that is treated as a partnership for federal tax purposes. On Date, Trust1 acquired an ownership interest in X from A, B, and C. Also on Date, Trust2 acquired an ownership interest in X from A. X's partnership return for the taxable year Year was filed, but a § 754 election to adjust the basis of partnership property was not filed with the return.

### LAW AND ANALYSIS

Section 754 provides that if a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property is adjusted in the case of a distribution of property, in the manner provided in § 734 and, in the case of a transfer of a partnership interest, in the manner provided in § 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 and § 1.754-1 to adjust the basis of partnership property under §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, shall be made in a written statement filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the election to be valid, the return must be filed not later than the time prescribed by § 1.6031-1(e) (including extensions thereof) for filing the return for such taxable year.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

### CONCLUSION

Based on the facts submitted and the representations made, we believe that the interests of the Government are prejudiced under § 301.9100-3(c)(1)(ii). We therefore conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied. As a result, X is denied an extension of time to file an election under § 754 for taxable year Year.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

/s/

Curtis G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: